

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8750 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

VALIBHAI MUSABHAI MEMON THRO' BROTHER HABIBBHAI MUSABHAI
Versus
DISTRICT MAGISTRATE

Appearance:

MR NM KAPADIA for Petitioner
Mr.Uday Bhatt AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 21/11/2000

ORAL JUDGEMENT

#. The petitioner by way of this petition under Article 226 of the Constitution of India has challenged the detention order passed against him under the Gujarat Prevention of Anti-Social Activities Act 1985

(hereinafter referred to as the PASA Act) on 12.7.2000 by the District Magistrate, Bhavnagar in exercise of the powers conferred upon him under section 3(1) of the PASA Act. The petitioner was detained in pursuance of this order from 12.7.2000.

#. The grounds of the detention which were served upon the petitioners and placed on record reveals that 3 crimes were registered against the petitioner with the following details.

#. On 14.7.98 vide Crime Register no. 39 of 1998 a crime under the Bombay Prohibition Act under sections 66-B, 65-E, A and 81 was registered against the petitioner in Gariadar Police Station. On 20.1.2000 vide Crime Register No.5026 of 2000 and crime under sections 66-B and 65-E and A was registered against the the petitioner in Una Police Station. On 25.3.2000 vide Crime Register No. 150 of 2000 a crime under sections 66-B, 65 A and E and 81 was registered against the petitioner in A Division Police Station, Bhavnagar. The detaining authority took into consideration the papers of the above said 3 crimes and came to the conclusion that the petitioner was dealing in distributing and selling illegal liquor which prejudicially affected the public health. The illegal activities of the petitioner has also affected the society and public health and disrupts public order by consuming the illegal liquor sold by the petitioner. The detaining authority further reached to the conclusion that the petitioner was a head strong person and he had created fear in public and nobody comes forward to file a complaint against him or give statement against him due to the fear of the petitioner. The 3 witnesses on assurance of anonymity gave statements to the police and from the statements it is clear that the petitioner indulged in anti social activity and who ever attempts to oppose the petitioner is beaten by him. It is also stated by the detaining authority in the grounds that the facts of the statements given by the anonymous witnesses were verified by him and were found to be true and therefore, the detaining authority considered to keep the names of the witnesses secret under section 9(2) of the PASA Act. The detaining authority also considered the effect of procedure under section 93 of the Bombay Prohibition Act and the procedure for the cancellation of the bail under section 437(5) of Cr.P.C. or action under section 59 of the Bombay Police Act were not fruitful remedy to prevent illegal activities of the petitioner. From the above material the detaining authority reached to the subjective satisfaction that the petitioner was a bootlegger within the meaning of section 3(b) of the

Bombay Prohibition Act and such an order for the detention under the PASA Act was the only remedy to prevent the illegal activity of the petitioner. Hence the order of detention.

#. Learned advocate Mr. N.M.Kapadia for the petitioner and Mr. Uday Bhatt on behalf of the respondents were heard.

#. The impugned detention order has been challenged by the petitioner on various grounds. One of the grounds is that the subjective satisfaction reached by the detaining authority is vitiated by the fact that the detaining authority wrongly and erroneously satisfied himself as to the genuineness of the statements of the witnesses whose names and addresses are kept secret under section 9(2) of the PASA Act. The duty is cast upon the detaining authority to apply its mind properly regarding the contents of the statements of the witnesses whose identity is kept secret. It must be reflected that the detaining authority himself considered the say of the witnesses and thereafter had come to the conclusion that the contents were true and powers under section 9(2) are required to be exercised. This is not enough but the materials on which the detaining authority might have relied upon, copies of which have been served upon the detenu must contain some contemporaneous material by which the detaining authority might have reached to subjective satisfaction that due to fear of the petitioner the identity of the witnesses were required to be kept anonymous and that the detaining authority itself was satisfied that the contents were true. If that is not done, it can be said that this is a wrong exercise under section 9(2) of the PASA Act vitiating the whole detention order.

#. On scrutiny of these grounds in this case it clearly appears that the matter can be decided and disposed of on this ground alone and therefore, the other grounds raised on behalf of the petitioner are not dealt with.

#. This case is covered directly by a decision of the Division Bench of this Court in the matter of Koli Ashwin vs. State of Gujarat in Special Cri. Application No.1812 of 1993. This Court referred to above decision of this Court in the matter of Jakirbhai Rahimbhai Nagori vs. District Magistrate, Mehsana & ors. as reported in 1996(1) GLH 300. The attention of this court was invited to the copies of statements of witnesses whose identity is kept secret. It is clearly found that the statements of such witnesses are before the Police Inspector,

Bhavnagar. The verification of the same was done by the Sub-Divisional Police Officer, Palitana. Thereafter the rubber stamp "verified the contents" has been put below the statement and verification of the same is signed by the District Magistrate. In the impugned detention order, the detaining authority has mentioned that he himself has verified the statements of witnesses whose identity is not disclosed and from this verification, the detaining authority has come to the conclusion that the petitioner is required to be detained and that the identity of the witnesses is required to be kept secret. In the similar circumstances in the above mentioned decision of Jakirbhai Rahimbhai Nagroi (Supra) this Court observed that the claim of privilege by the detaining authority on the basis of such endorsement was not genuine one. This court referred to the case of Koli Ashwin vs. State of Gujarat and the following observations of the case of Koli Ashwin (Supra) were relied upon by this court.

" However, as is well established, for exercising the power under Section 9(2) what is required for a detaining authority is that he must come to a subjective satisfaction himself and for that purpose, he must be able to point out either in the grounds or in the contemporaneous record that he had sufficient material before him to come to that subjective satisfaction. In the instant case, in the aforesaid background of the statement of each of the witnesses, when we turn to the statements for further material, which the detaining authority can make use of for arriving at a subjective satisfaction except for one word "verified" used by the Dy. S.P. who apparently has put it pursuant to an instruction received from the detaining authority for verifying the statement, there is no other material."

#. In view of this established law it is clear that to claim privilege under section 9(2) the detaining authority is duty bound to point out either from the material available or from the contemporaneous record that he had sufficient reasons and materials before him to come to subjective satisfaction that the contents of the statements were true and that he himself has verified the facts of the statements. In Koli Ashwin case (Supra) the statements of such witnesses were recorded by Dy.S.P. The detaining authority endorsed the word "verified" while in this case also the detaining authority put the rubber stamp "verified the contents" Therefore, prima-facie the exercise undertaken by the detaining

authority appears to be technical and mechanical. There is nothing on record to show that the detaining authority applied its mind, in fact verified the contents and for the reasons the detaining authority reached to subjective satisfaction to claim privilege under section 9(2) of PASA Act. The detention order impugned in this view of the discussion is required to be set aside on this ground alone.

#. In this view of the matter the detention order dated 12.7.2000 of the detaining authority i.e. District Magistrate, Bhavnagar passed against the petitioner is set a side and quashed. The petitioner-Valibhai Musabhai Memon is ordered to be set at liberty forthwith if he is not required to be detained in custody for any other purpose. Rule is made absolute. No order as to costs. D.S. permitted.

(J.R.Vora-J)

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